

REMARKS/ARGUMENTS

Reconsideration of the Final Rejection and withdrawal of the rejection of all the claims now in the application (i.e., claims 1-21) is respectfully requested in view of the foregoing amendments and the following remarks.

It is the Examiner's position that Roby et al. U.S. Patent No. 6,287,499 teaches in column 4, lines 13-19 that the filament is not under tension between the second and third rollers. This is clearly not the case. Column 4 of Roby et al. clearly teaches that the recovery should be between 85 to about 97 percent and preferably from about 90 to 95 percent of the stretched length of the filament. In order to accommodate this on-line shrinkage in the filament, the speed of the last (third) roller is "somewhat less" than the speed of the second roller. The amount of shrinkage is controlled by the speed differential. Obviously the second godet would have to be running faster than the third to achieve a 97 percent reduction of the stretch length. The speed difference between the second godet and third godet would have to be higher to achieve an 85 percent reduction in stretched length. However, to achieve a controlled relaxation the tension must be maintained in the filament and thus the tension can't be totally released.

To completely release the tension as claimed by Applicant, the third roller would have to be non-rotating (i.e. eliminated). If the final roller is not rotating, the ability to control the recovery from 85 to 97 percent of the stretched filament is eliminated. Consequently, Robey et al. teaches away from releasing all the tension in the extrudate prior to cooling. References that teach away cannot serve to create a prima facie case of obviousness. See *McGinley v. Franklin Sports Inc.*, 60 U.S.P.Q.2d 101, 110 (Fed. Cir. 2001). "If references taken in combination would produce a "seemingly inoperative device" we have held that such references teach away

from the combination and thus cannot serve as predicates for a prima facie case of obviousness." *Id.* (citations omitted).

In Roby et al., releasing all the tension on the extrudate after the second puller 24 and prior to allowing the extrudate to cool to room temperature would eliminate the ability to control the recovery would eliminate the necessity of the third puller 26.

In the claimed process, the entire tension on the extrudate is released after the second puller and prior to allowing the extrudate to cool to room temperature. It has been unexpectedly found that if the extrudate cools under tension and is later sterilized such as by gamma radiation, the polymer then shrinks, whereas if it is cooled after tension is released, all shrinkage occurs at that point and then later during sterilization, the dimensional stability is maintained. Roby et al. teaches only that tension may be partially released after the second puller with some tension maintained by a third puller allowing a controlled shrinkage of the polymer.

Applicant requests that the Examiner enter these arguments as part of the record of this application.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

Application No.: 10/796,233

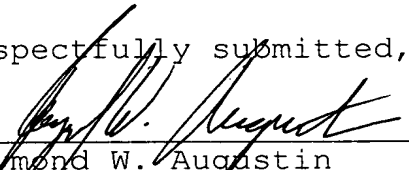
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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By


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